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REPORT OF THE COMMITTEE

TO REVIEW

THE MASSACHUSETTS COMMISSION AGAINST DISCRIMINATION

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INTRODUCTION

On October 31, 1974, the Governor announced the appointment of a Committee to Review the Massachusetts Commission Against Discrimination. This appointment was in response to criticism leveled against the Commission in the months just prior to the announcement which questioned the agency's "effectiveness and sincerity". The charge given by the governor to the members of this Committee was that we review the mandate and performance of MCAD and, where appropriate, propose changes which might better equip the agency to meet the challenge of combating discrimination within the Commonwealth.

The members of the Committee as selected by the governor were as follows:

Representative Melvin King of Boston (Chairman)
Representative Doris Bunte of Boston
Representative Peter Masnik of Worcester
Senator William Saltonstall of Manchester
Ms. Ellen Feingold, Civil Liberties Union
Mr. Walter Palmer, Raytheon Corporation
Mr. Bertram M. Lee, Lee-Grigsby Associates
Ms. Gale Rosalyn Johnson, National Labor Relations Board
Ms. Lucy Cuadrado, Emergency Tenants Council

The goal which was envisioned by the Committee when we set out to establish a format upon which to conduct the review was that of receiving a significant amount of pertinent information from all relevant sources. These sources were identified to be the present and past members of the commission; the present and former employees of the commission; and all other parties who have had official dealings with the agency. The procedure which was finally adopted was designed, therefore, to insure equal participation from each of these defined groups and concurrently to provide the Committee with a means of digesting the evidence offered in a systematic and orderly fashion.

The initial phase of the investigation involved the taking of testimony from a selected number of individuals presently employed by the agency at a series of weekly sessions held by the Committee. As a result of these interviews, the Committee requested and received from the witnesses and the commission a voluminous file of documents and records. It was from these interviews and the written matter submitted that we of the Committee familiarized ourselves with the internal operation of the agency.

The second portion of the review consisted of two public hearings; the first of which was held in Boston, while the second was later conducted in Springfield. Those invited to appear at these hearings included complainants who had written to the Committee criticizing the agency, disgruntled former employees, members of the advisory councils, former commissioners, members of community groups and the general public. Both hearings were well attended and were successful as to the quality and the quantity of testimony rendered.

Subsequent to the public hearings, the Committee invited certain ex-employees who had been unable or unwilling to appear at the public sessions or who did testify but felt constrained by the hearings time limits to appear before the Committee at its weekly meetings. The present commissioners were also requested to testify at this time rather than before the hearings, so that they would have had the opportunity to listen to any unfavorable evidence given at the hearings before being questioned by the Committee.

The final stage of the review was the actual assembling of the report. The Committee spent many long hours re-examining testimony and written evidence in an attempt to determine what the real problems were and how best they might be remedied. The issues were complex and the decisions difficult, but we of the Committee hope and believe that this is a document which genuinely reflects the state of affairs at MCAD and which also will have a positive effect upon the operation of the agency.

FINDINGS

LEADERSHIP ROLES WITHIN THE AGENCY

ADMINISTRATION

Before the hiring of the present director of administration in July of 1973, the administration of the agency was in the hands of the commissioners and the executive secretary. From testimony rendered by some members of the staff, however, it appears that the secretary was virtually non-functioning as an administrator. Personnel who were technically accountable to him instead received their assignments from and reported to individual commissioners. Consequently, much of the load of administering the agency fell upon the part-time commissioners.

As reported by witnesses, it eventually became obvious to all concerned that this was a totally unworkable situation. Duties were performed on an ad hoc basis with no attempt made to attack problems systematically. When an individual commissioner desired a particular task done, he or she simply asked an employee to do it. Otherwise the staff determined its own priorities and then carried them out in their own fashion.

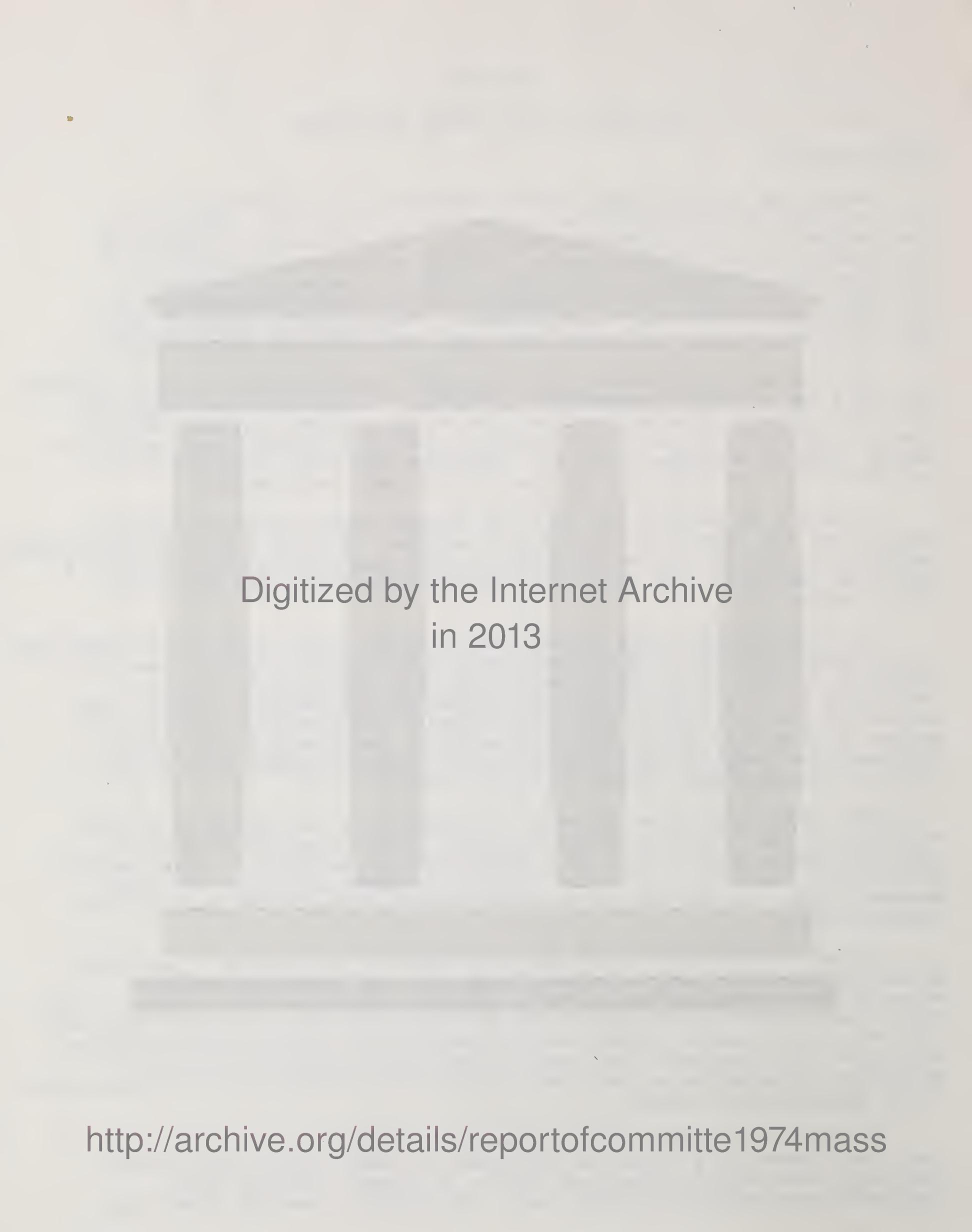
It should be pointed out that the commissioners cannot be totally faulted for the lack of direction that existed. Sitting as the policy-making, judicial and administrative authority in the agency and serving in only a part-time capacity, they could not possibly have discharged all their duties adequately.

The commissioners have stated that in light of the chaos which prevailed in the administration of MCAD, and their inability to cause the executive secretary to deal with this turmoil, they felt compelled to hire an individual to deal exclusively with administrative matters. Having been on the job for less than a year, the director has established a certain amount of stability within the organization. Nevertheless, particular problems have remained unsolved and certain other dilemmas have arisen since the commencement of the director's tenure.

Most importantly, the director is hampered in the execution of his duties by a lack of independence, which is a direct result of the fact that the commissioners still make administrative decisions. Consequently, a situation now exists where the director can make decisions but these determinations are subject to revision or abrogation on the part of the commissioners.

Indeed, it did occur that after the director had issued a particular directive regarding administrative procedure, the employees affected appealed to the commissioners who in response overturned the original order. The issue in such an instance is not the merits of the particular decision, but rather the harm it renders to the creation of a stable administrative structure. The precedent has been set for any individual or group of employees aggrieved by an order of the director to petition the commissioners for a determinative ruling.

An additional factor which impedes the director in his efforts is the fact that there are a number of employees who have higher grade levels than he. Technically, therefore, he has no power to compel these individuals to obey his instructions. Fortunately, most of those with



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higher status have voluntarily complied with his wishes, but on occasion, certain of the upper level staff have either disregarded directives or else questioned them before the commission. It is not presumptuous to assume that the willingness to either ignore or appeal an order springs from a belief that the director has no actual authority over the affected employee.

The present director also appears to carry a liability which hinders his exerting smooth administrative control over the agency. Employees have complained that he is unfamiliar with the type of case processing utilized by the agency and therefore does not comprehend the special problems that are inherent in this kind of operation. The efficiency of MCAD cannot be improved unless these indigenous difficulties are understood and dealt with in an intelligent manner; thus, any evaluation of the quality and quantity of work produced without taking into account the real problems which exist can only be a futile exercise. It is the administrator's attempt to evaluate without fully comprehending what he is judging that employees find most disconcerting.

POLICY

Although they are responsible for the formulation of policy, the commissioners have been less than effective in this area of their responsibilities. It appears that little in the way of formal policy emanates from the commission. Here again, determinations are made on an ad hoc basis. As problems arise and situations present themselves, the commissioners will move to meet the current dilemma. As to the setting of long range policy, however, there is little evidence to indicate that the commissioners have developed in any depth programs which reflect the agency's goals.

To a great degree, the making of policy has been limited to the written decisions and orders which the commissioners issue and the sequence in which they hear cases at public hearings. The latter serves to indicate what type of cases they believe deserve priority treatment and the bulk of their limited attention. In the decisions that they write, they state either explicitly or implicitly how strictly they intend to interpret a particular law, how aggressive the commission will be in enforcing a statute and what interpretation they want tested in court - by means of the appeals process.

Although there are some aspects of the function of setting policy that are accomplished through the commission's execution of its judicial duties, there most definitely exists a deficiency in the other particulars that are included in this zone of responsibility.

The time factor again plays an important role in this unsatisfactory state of affairs. The development of specialized programs is a particularly time consuming task and the limited time which each commissioner can devote to the commission's work must necessarily have an enervating effect on this activity. The chairwoman has testified to the fact that it is a difficult task to even schedule a policy meeting at which all the commissioners can attend. By its very nature, this is one area in which thoughtful planning is a necessity and one to which part-time status is particularly not amenable.

Another concern in this area is the fact that the constituents of MCAD have little input into the policy which is evolved. The advisory councils tend to be relatively ineffective because they do not possess any inherent power. These councils are appointed by the commission and are mandated only to make suggestions to the commissioners. The commissioners are in no way obligated to heed the recommendations and criticisms of these groups; thus, they are under no compulsion to allow those who represent the communities which the commission serves to contribute to the development of MCAD.

JUDICIAL

As investigating and hearing commissioners, the members of the commission perform the judicial tasks within the agency. These tasks include determining the existence of probable cause in a complaint, sitting as judicial officer at a preliminary or a public hearing, rendering decisions and orders applicable to those cases heard and sitting in appellate review of those cases which have advanced to the public hearing stage and which have been appealed.

It is in this most important realm that the commissioners perform most capably. Their knowledge of the law and their application of it indicate that there is maintained an acceptable degree of professional competence within the commission. The Committee therefore is convinced that the deficiencies which are present in this portion of the agency's operation are not the result of a lack of legal expertise on the part of the commissioners.

The lack of hours which the commissioners can dedicate to MCAD business produces the predictable result of crippling their performance in this area. Commissioners must frequently either postpone or cut short public hearings because they are compelled to attend to their private law practice and other business matters. They cannot be faulted to any great degree for such behavior, however, because their \$8,000 salaries must be supplemented. Unfortunately, it is the parties to the case who suffer as a result of these irritating occurrences.

Another source of delay and frustration is the fact that in many instances it takes months after a hearing is held for the decision to be written and issued. Again, the writing of a good opinion takes many hours of thought and deliberation; hours which the commissioners do not have to give. On some occasions, the hearing commissioners have assigned an attorney the job of writing the opinion; a procedure which does not, however, reduce the time span between hearing and order, because the attorneys are already overworked performing their required duties. Although it diminishes the burden on the commissioners it increases the load for the lawyers.

In 1973, there were seventy-six hearing days, three more than there were in 1972; a totally inadequate amount of days to deal with the number of cases that are scheduled for public hearing. The consequence of this fact is that there now exists a sizable back-log consisting of over fifty cases that have been certified for public hearing and that are awaiting either to be scheduled or heard. Since one of the agency's problems is the huge number of open complaints it has, this pile-up of probable cause cases can only contribute to the agency's difficulties. As desperate as the situation is, however, part-time commissioners can only do so much.

STAFF MORALE

The Committee found what it deems to be a serious morale problem existing at every staff level of the agency. Although the reasons for this perceived malaise are many and varied, the prime cause would appear to be the lack of order and stability within MCAD. The statements made by staff members in the course of interviews have left the members of the Committee with the clear impression that the witnesses viewed MCAD as an agency whose operations just muddled along in a spasmodic fashion with little sense of coordination or organization.

The confusion and decision reversals seen by the employees at the agency's highest levels of authority have had a particularly demoralizing effect. This condition of instability at the top must inexorably lead to the deterioration of motivation at the bottom. An individual is left with the quandary of wondering how discrimination can be effectively combated when disorganization reigns within the enforcement instrument. Under the best of conditions, the employees of such an agency face enough frustration and disappointment every day without having to labor under this additional burden.

In some instances, individuals are performing tasks for which they are not qualified or for which their job description makes no mention. It is indicative of the unstructured atmosphere which permeates the agency that permits this practice of issuing assignments to those who will not complain and in whom the issuer has great confidence even though the task is outside the recipient's realm of responsibility. The unavoidable result is that some carry more than their share of the load which ultimately leads to resentment and decreased efficiency.

Most employees maintain that they execute their duties in an extremely independent manner since little direction and supervision emanates from superiors. They decide individually what they have to do, how much they should do and how they are going to do it. Admittedly, the situation has changed for the better since the introduction of the director of administration into the agency, but the same attitude seems still to prevail. For the most part, the executive staff, the legal department and the field staff are left to do as they wish.

The major exceptions to this practice are those circumstances in which the approval of the commissioners is required. In dealings with the executive staff, especially, the commissioners are reported by staff members to be at times reluctant to delegate authority to them. In fact, at least one serious confrontation had developed involving the right of an executive staff person to make independent judgments without seeking full commission ratification. A dichotomous situation therefore has arisen in which the commissioners either exercise full control over executive staff activity or else supply little direction at all. The determining factor would appear to be whether the commissioners are interested in a particular project or not.

Field representatives and their attorney-supervisors feel swamped by the back-log they must cope with. Each field representative knows

that there is no way that he can satisfactorily complete all the cases assigned to him when there may be as many as ninety complaints sitting on his desk. Psychologically, it is extremely depressing to be faced with these circumstances day after day; hence, the diligence with which an investigator works is frequently less than maximum.

The attorney-supervisor's problems are those of the field representative only magnified. A supervisor overseeing as many as four field representatives must concurrently be responsible for between two and three hundred cases. When one considers that the lawyer is also responsible for legal tasks such as appearing in public hearings and in conferences, this becomes an impossible load for both psychological and physical reasons.

As a corollary to this back-log problem, both the field representative and the attorney are subject to abuse from frustrated complainants. A complainant justifiably has a right to expect that his case will be processed within a reasonable time, and when such disposition is not forthcoming he tends to blame those that are handling his case. Thus, both supervisor and investigator are subjected to a constant stream of criticism for a situation for which they are not totally liable.

PROMOTIONS

Many employees are upset at the promotion policies as they are applied at MCAD. They have charged that individuals are promoted or demoted for reasons of politics, personality or race. Upon examination by members of the Committee, it appears that in fact personnel decisions have been made in which talent was not necessarily the prime consideration. Of course in any personnel decision, a number of factors must be considered, including racial representation within a department, but in a few instances the selections made by the commissioners have made little sense based on any job-related criteria. Those that were victims of this procedure have often become confused and embittered and all employees have lost that much more respect for MCAD's leadership.

BRANCH OFFICES

Employees in the branch offices of the agency feel isolated, forgotten and helpless. In the Springfield, Worcester and New Bedford offices, there are no more than two field representatives and one secretary for each branch. There are no lawyers, no commissioners or any other personnel present in any of these offices. Lawyers are assigned to each city but they sit in Boston and communicate with their investigator by phone and letter.

Very little independence resides with the regional staff. All final decisions about findings, conciliations, and certifications for public hearing must be made in the Boston office; a circumstance which makes the regional office appear impotent in the eyes of those it serves.

Field representatives from these branch cities when interviewed complained of experiencing communication problems with the Boston office. They maintain that they have cases waiting to be closed that stay that way for long periods of time while they await word from supervisors. It is their feeling that their cases receive low priority from the Boston office; thus, they are left with the impression that they are forgotten and unimportant.

The fact that they must usually come to Boston for public hearings is an additional source of irritation to the regional personnel. This situation works an inconvenience on the staff, the complainants, the respondents and the witnesses. The Committee concurs that such a practice appears extremely burdensome to all involved.

DISCRIMINATION

The commission appears to utilize quotas for certain ethnic delineations. Within the last four years, there have been a maximum of two Spanish-surnamed, one Oriental and one American Indian field representatives employed by the agency at any one time. Furthermore, there are presently no members of the communities employed at the clerical, legal, executive staff or commission levels. Judging from the backgrounds of the present field representative and clerical staff, we find it difficult to accept the argument that there are no qualified people among these groups for at least these jobs.

During the last year, there have been many charges made that several black employees have been terminated solely because of their color combined with their being outspoken regarding discriminatory practices within the agency. The evidence examined by the Committee in this regard has been both contradictory and inconclusive. It is true that some of the employees fired had poor work records, but it is also true that there were other staff people guilty of equally poor performances who were not terminated. Further, while it is true that black employees with relatively good records were dismissed, it is also a fact that the federal program paying these individuals ran out. The case of the former Public Information Officer is presently pending in court which would seem to be the correct forum for the task of sorting and evaluating the conflicting evidence concerning her termination.

There have been additional accusations made by minority employees concerning the commission's staffing of executive positions. These individuals have charged that Blacks are placed in supervisory posts in which they in fact have no real authority over white employees with the exception of clerical personnel. The essence of these allegations is that while a black supervisor may possess technical authority, real and ultimate power lies in the hands of white individuals. The racism imputed to the agency through these charges is of an extremely subtle nature, however, and it is most difficult to prove.

CASE PROCESSING

The initial procedural activities involved in the processing of a complaint are unnecessarily slow. Field representatives have spoken of it taking sometimes five days or more from the time that a complaint is filed for it to be ready for assignment. A witness at the Boston public hearing testified that in one case it took forty-nine days before the respondent received a copy of the complaint. It is these kinds of delays which would seem to be the easiest to eradicate.

The time it takes to investigate a complaint is totally unreasonable. Numerous complainants spoke at both public hearings as to how they have had to wait months and even years to get mere findings in their cases.

There are a number of factors which contribute to the length of time now required to complete an investigation. Most significant is the fact that a field representative is overburdened with the number of cases he must investigate. With the existence of an ever-increasing back-log, it may take months before a case is even commenced.

Poor investigative work which to a certain degree can be linked directly to the lack of training received by field representatives is another sore point. A new investigator learns as he goes along how to handle a complaint; a method which can result in the implementation of bad or inadequate investigative techniques. Therefore, an investigator may work for years and not essentially know what he is doing.

Finally, there exists little pressure on a field representative to complete an investigation except that applied by an enraged complainant. Within the agency staff there are no time limits or guidelines to suggest how long an investigation should take. The only pressure that is exerted from within comes from the diligent supervisor.

The quality of the supervision delivered by the supervisors is uneven. Some are extremely zealous and offer a great deal of assistance to their field representatives, while others feel that supervision is little more than a burdensome chore which must be tolerated but certainly not relished. Thus, some investigators are virtually on their own.

Conciliation in complaints, in which some action is deemed appropriate, is in many instances not accomplished swiftly. When, as frequently occurs, the conciliation process proves fruitless, agency officials are reluctant to certify the case for public hearing even though the respondent is guilty of dilatory practices.

The gap between the time when a case is certified for public hearing and when it is actually scheduled is unnecessarily long. It frequently takes months for a case to be scheduled after certification. One of the reasons may be the unavailability of commissioners, but this does not appear to be the only cause.

The executive secretary is in charge of scheduling. A difficulty which the Committee encountered was determining what policy the secretary applied

to his scheduling duties. Last year, of the twenty-two cases heard at public hearings, the time lapse between the date of certification and the actual date of the hearing ranged from three months to two years. What is puzzling is the fact that there are still cases that have been certified for over two years which have not yet been heard. The methodology employed here seems bizarre.

BACK-LOG

There are approximately twenty-eight hundred cases now open, not including those filed in 1974. The breakdown by year of filing is 176 (1970); 419 (1971); 853 (1972) and 1332 (1973). These figures indicate that there are over fourteen hundred open cases that are at least one year old.

Unless drastic measures are undertaken, the number of open cases is not likely to decrease in the near future. In the last three years, for instance, the number of complaints filed has increased by over fifty percent. Again, the breakdown by year is as follows: 1005 (1970); 1917 (1971); 1360 (1972) and 1538 (1973).

To a large degree this dramatic increase can be attributed to the fact that MCAD's jurisdiction has been greatly expanded by the Legislature since 1971. During this period, MCAD's housing statute has been augmented by the addition of the following categories: sex and age, welfare recipients, persons with children, blind persons and marital status. The employment statute now protects persons who were discharged from mental health facilities and persons with criminal records.

In education, discrimination on the basis of sex and age is now prohibited in vocational training institutions and in graduate degree programs. Credit may not now be denied on the basis of sex and marital status, and public accommodations may not be withheld because of sex.

At the same time that the Legislature has increased the agency's jurisdiction, it has not appreciably enlarged its budget. Therefore, the agency has been forced to handle a greater workload with no commensurate increase in staff.

It is the existence of such a massive log of cases that accounts primarily for the agency's poor reputation among those it serves. These figures render support to the charges that MCAD either will not or cannot help those who have been discriminated against. As the back-log of cases pile up, the reputation of the agency sinks lower and lower.

RECOMMENDATIONS

STRUCTURE

BOARD OF DIRECTORS

The Committee recommends that there be created and established a board of directors whose primary function will be that of determining policy for the agency and monitoring the implementation of these decisions. The board shall consist of fifteen men and women appointed by the governor who shall designate one of the members as chairperson.

Among the fifteen individuals on the board, three shall be the commissioners sitting as ex-officio members. They shall enjoy full voting privileges, but each shall be prohibited from serving as chairperson.

Of the additional twelve persons to be chosen by the governor, private employers, landlords, the Civil Service Commission and post-secondary educational institutions shall be represented in four of these selections. Each of the four shall be appointed for terms of four years, except that in making his initial appointments, the governor shall appoint two directors to serve for two years and two directors to serve for four years.

As for the remaining positions on the board, there shall be representation from the Black, Spanish-surnamed, American Indian, Oriental and elderly communities. These individuals shall be appointed for terms of four years, except that in making his initial appointments, the governor shall appoint four directors to serve for two years and four directors to serve for four years.

There shall be no fewer than six individuals of either sex on the board. For the purpose of geographic distribution, at least two directors shall reside in greater Boston; at least one shall reside in the Lawrence-Lowell area; at least one shall reside in greater Springfield; at least one shall reside in the New Bedford-Fall River area; and at least one shall reside in greater Worcester.

The board may meet as often as it deems necessary, but it shall be required to assemble at least once per month. Eight of the directors shall constitute a quorum for the conducting of the business thereof and decisions made shall be by majority vote, unless otherwise specified; provided, however, that no action shall be taken unless six or more members vote in support thereof.

Each director shall be entitled to reimbursement for his actual and necessary expenses incurred in the performance of his official duties and with the exception of the commissioners to compensation based on a per diem schedule.

EXECUTIVE DIRECTOR

The Committee recommends that there be created the position of executive director. The holder of this title will be the chief administrative officer of the agency and in this capacity will be responsible for its day-to-day operations. The board of directors will hire the executive director who shall serve at the pleasure of the board.

The Committee believes that the individual chosen as executive director should meet specific minimum job requirements. First, he or she must possess a thorough comprehension of case processing as it is practiced by MCAD. Further, this individual should understand the nature of commission initiated actions, such as class action suits. Finally, the person eventually hired must be possessed of strong administrative and organizational skills.

Moreover, the Committee is of the opinion that the director need not be an attorney. Of course, these stated criteria do not preclude the selection of a lawyer to this post, but neither do they make such a choice obligatory.

RECORD EXAMINER

The Committee recommends that there be created the positions of record examiner whose primary duty will be that of determining whether there exists sufficient evidence to warrant a finding of probable cause in a complaint. He will make this decision based on a written record submitted to him by the chief of the investigative unit to which the case will have been initially assigned.

If the examiner should decide that the record supports a finding of probable cause, he shall immediately endeavor to eliminate the unlawful practice by means of conciliation. Should efforts to settle the complaint within a reasonable time prove fruitless, however, he shall direct the proper official to certify the case for public hearing.

In those situations in which temporary relief is deemed necessary to prevent the complainant from suffering irreparable harm, the examiner shall recommend to a commissioner that such relief be sought from the courts. The commissioner shall then direct the general counsel to commence appropriate action.

The record examiner shall be hired by the executive director and shall be accountable to him.

GENERAL COUNSEL

The Committee recommends that the commission exercise the powers given to it by virtue of Ch. 151 b Section 6; whereby, the commission may appear in court to enforce its own orders. Presently, the commission relies on the attorney general's office in spite of said enabling statute. The utilization of this power will take on added significance should MCAD seek to enforce an order against another state agency, because the attorney general by law is required to represent in court all state agencies who request him to do so. In this situation, unless MCAD appears in court in its own behalf, an unnecessary conflict will arise.

In addition, the Committee recommends that the commission be granted the power to obtain temporary relief from the courts. In order to prevent irreparable harm from happening to a complainant whose case is pending, it is now necessary for MCAD to request the attorney general to petition the court in its behalf.

The Commission lawyers by the very nature of their duties possess expertise in the areas of the law in which this type of relief would be sought. Nevertheless, when these situations arise, they are compelled to seek out one of the two part-time attorneys assigned to the attorney general's civil rights division. The end result of this practice being that an added burden is placed on the already over-worked attorney general's staff; the time of the commission's attorneys is unnecessarily wasted; and most significantly, the complainant may be harmed by this time consuming multiplicity of procedural steps.

The Committee further recommends that the general counsel be empowered to hear appeals from complainants who seek review of cases in which lack of probable cause was found by the record examiner. The counsel and two of his staff shall sit as a panel and determine if there is in fact an insufficient basis for rendering a finding of probable cause. If his petition is denied in this forum, the complainant shall be afforded no further right to appeal within the agency.

The case in support of a complaint shall be presented to the commission by the general counsel's office. In addition, the counsel and his staff shall be able to seek advisory opinions from the commission concerning issues which require clarification.

The general counsel's office shall consist of the general counsel, who shall be hired by the executive director and who shall be accountable to him, and his staff of attorneys.

EXECUTIVE SECRETARY

It is recommended by the Committee that the position of executive secretary be eliminated. Since the introduction of the director of administration position, the executive secretary's duties have been reduced; so that, the scheduling of public hearings is now his primary responsibility. This is basically a clerking duty which could be performed easily by the general counsel and the docketing clerk. To continue funding this superfluous job slot would be a waste of the taxpayers' money.

DIRECTOR OF ADMINISTRATION

The Committee recommends the elimination of the director of administration position. The proposed executive director would perform those duties for which the director of administration is now responsible.

LEGISLATION

1. The Committee supports legislation which would grant to a complainant the right to initiate a private right of action should MCAD prove less than expeditious in its processing of that individual's case.

The institution of this alternative would serve to relieve the complainant of the injustice of waiting long periods of time for the resolution of this complaint.

2. The Committee also supports legislation which would expand the limit on damages in housing cases from \$1000 to \$5000 and would also allow the recovery of attorney's fees. Employment cases have no such limit on damages or proscription against the recovery of attorney's fee. The Committee sees no inherent reason for this distinction but feels that if some limit is required, it should be at a minimum \$5000.

COMMISSIONERS

The Committee recommends that the commission consist of three commissioners, who shall be full-time and who shall be appointed by the governor, to terms that are coterminous to that of the governor. The governor shall designate one of the commissioners as chairman, who shall serve in that capacity at the pleasure of the governor.

The commissioners primary responsibility will be judicial in nature: they will hear cases, render opinions and direct the general counsel to take appropriate measures to enforce their orders. In addition, as ex-officio members of the board of directors, they shall participate in the setting of policy for the agency.

The Committee firmly believes that having three full-time commissioners whose major role will be that of hearing cases is a device which will significantly increase the number of public hearing days that the agency will have available. More hearing days means more hearings which means a reduction in the back-log at this most crucial step in case processing.

It is further recommended by this Committee that each commissioner be assigned to each branch office for a specified number of days per year. It is envisioned that a system similar to the circuit approach employed by the judiciary could be developed to effectuate this plan. With easy access to a hearing commissioner, the branch offices of the agency will be able to process cases in a more timely fashion.

Although the commissioner assigned to a particular office shall have the power to hear cases, he shall not in any way attempt to participate in making administrative decisions in that office. Such power resides solely with the executive director and his designees. The lines of authority and realms of responsibility must be clear and distinct for the agency to attain organizational stability.

The Committee recommends that the chairman of the commission be empowered to appoint temporary commissioners when from time to time it occurs that there are too many hearings scheduled and not enough commissioners to hear them. These commissioners may be appointed on a case by case basis or for a specific length of time. It is crucial that a back-log not arise because complainants are the ones that suffer.

It is further recommended by the Committee that the commission no longer have the power of appellate review, but that this power should reside in the hands of the courts alone. Presently, if an appellant files a timely appeal in Superior Court, a decision by the full commission sitting in review of a single commissioner's order in no way precludes the individual from pursuing his case in court. Therefore, the commission's review would seem a time-consuming and indecisive procedure.

The legislation which reduced the number of commissioners required to preside at a hearing from three to one has been a marked success. Its effect has been to make hearing scheduling easier and provide the agency with more commissioner hours without reducing the quality of hearings or decisions. The only recommendation that the Committee would make in this regard is that in cases which might have wide ramifications, such as certain class action complaints, the commissioners might decide to sit as a body in order to lend the full weight of the commission to the decision.

The Committee recommends that an appropriate portion of the agency's legal and clerical contingents be allocated for the use of the commissioners exclusively. It is believed that the assignment of support personnel to the commissioners will better enable them to make judicious use of their available time.

ADMINISTRATION

OPERATIONAL STRUCTURE

The Committee recommends that senior field representatives replace attorneys as investigative unit supervisors. Presently, all field representatives are assigned to one of seven investigative units, each headed by an attorney. As unit chief, the attorney assigns cases and oversees investigations.

The concept of processing cases through units appears fundamentally to be a sound one. It enables personnel to specialize and makes close supervision possible. However, as the units are presently structured, the commission is not making the most effective use of its resources. Lawyers should be freed of their administrative duties to do legal work and qualified field representatives should be afforded the opportunity to attain supervisor status. Not only will this result in a more sensible assignment of personnel, but it will also create promotional opportunities for field representatives who justifiably believe that there is now little chance for them to advance within the agency.

Comment should be made upon the procedure of having units specialize in particular kinds of cases. At the moment, one unit deals exclusively in housing cases; one unit handles sex and age employment complaints; and the other units deal with various types of employment cases. This specialization procedure enables unit personnel to obtain expertise in their particular area of concern which in turn facilitates the orderly and speedy processing of cases. It may be advisable once sufficient techniques are developed to divide employment cases into categories and assign each employment unit to a particular category.

Although the use of specialization has proved most efficacious, the members of the Committee believe that it might prove beneficial to both the agency and to the individual field representatives if personnel were interchanged among units. This practice would not only permit the executive director to reassign personnel according to the needs of the agency (there is a flood of housing cases during the summer for example), but it would also increase the advancement opportunities for qualified field representatives by expanding their experience beyond their own specialty.

STAFF AND EQUIPMENT

The Committee recommends that the field staff of MCAD be expanded on a temporary basis. Since the number of open cases now stands at 2700, it is obvious that before any kind of administrative and technical changes can have a significant effect on the time it takes to process a complaint, this back-log will have to be drastically reduced through sheer manpower.

It is hoped that the augmentation of the field staff on a temporary basis coupled with the implementation of suggested administrative and training measures will make it feasible within a year to make an accurate evaluation as to the desirability of enlarging the staff permanently. It is difficult to assess at this time whether a larger

staff or just a more competent staff is needed, because the heavy caseload under which each field representative must toil makes any evaluation perilous.

The Committee recommends that an affirmative recruitment program be initiated for all staff openings. The agency should actively recruit people from the Spanish-surnamed, American Indian and Oriental populations for positions at the clerical, field staff, legal, executive staff and commissioner level.

In certain situations, employers guilty of discrimination are directed to establish numerical objectives to insure minority participation. For the same reason, perhaps MCAD should be directed to institute minority hiring goals applicable to selected minority groups. In any event, the agency should take positive steps to improve the present situation.

The Committee recommends that the present executive secretary be relieved of his duties.

It is a hope held by the Committee that the introduction of a strong executive director into the hierarchy of the agency will result in the improved morale and performance of the executive staff. Direct lines of communication should be opened so that staff members may be apprised of their exact standing within the structure of MCAD. Each should comprehend exactly what his or her duties are and how much independence he or she will be afforded in order to execute these responsibilities. With greater direction from above, the ad hoc approach presently applied to arising problems can be replaced by a more systematic mode of operations.

It is recommended by the Committee that the clerical staff be given the opportunity to play a more prominent role in the agency's activities. It would be advantageous from an efficiency as well as a morale point of view for the clerical people to be made cognizant of every step of case processing and perhaps even be trained to assist in carrying out some of these duties. If such a program were implemented, the clerical people would feel more involved in the workings of the agency, and at the same time, they would be performing tasks which would enable field representatives to devote more time to their other areas of responsibility.

The Committee recommends that within the budget for MCAD there be included a provision for the purchase of modern mechanical equipment. The utilization of devices such as the dictaphone could significantly decrease the amount of time it takes to initially process a complaint and also could diminish the time spent by field representatives and lawyers doing paper work.

TRAINING

The Committee recommends that comprehensive training programs be developed and implemented at every personnel strata within the agency including the commissioner level. Present employees should be directed to attend training meetings where bad habits may be discovered and corrected and new techniques discussed and adopted. All new employees

should be considered as trainees for at least a thirty-day period, during which they should be involved in a systematic intensive training program.

In its budget proposals, the commission should ask for one less field representative, and instead request the funds to hire a full-time trainer. The immediate loss of one field representative will be more than compensated for in the long run by better performances on the part of the remaining employees due to their participation in training activities.

A training manual should be developed for each staff position either by the trainer or by the most experienced individuals at each level. Such a manual will, if developed thoughtfully, reduce significantly the number of hours that would need be devoted to training sessions.

As for the commissioners, E.E.O.C. frequently holds training conferences throughout the country that deal with discrimination laws and their application. The Committee recommends that funds be made available to permit the commissioners to attend these meetings. In this relatively new area of the law in which new decisions are being handed down at a rapid pace by the courts, it would seem obvious that these conferences could be of immeasurable value to the commissioners in their role as semi-judicial officers.

Provision might also be made for the general counsel to attend these meetings. In his capacity as chief attorney for the agency, the information imparted at these meetings would most certainly assist him in his duties.

CASE PROCESSING

The Committee recommends the implementation of time limits and administrative procedures that will reflect the promptness urged in Ch. 151 b Section 5, the procedure section. The time limits should be incorporated into the agency's regulations in order to endow them with some weight of authority.

In all cases in which MCAD commences action, a time limit should be established for the completion of the investigation. In housing cases, the time should run from the date that the complaint is filed. In employment cases, the time should run from the date that the interrogatories are mailed to the respondent. Of course, this added step would necessitate that a longer span of time be allotted to the completion of an investigation in the employment situation.

If in an employment case, the respondent is delinquent in returning interrogatories by their due date or in supplying any matter which the commission has a legal right to request, the commission should make an immediate finding of probable cause. It is believed that such a sanction will encourage respondents to answer in a timely fashion.

If in either a housing or an employment case, the investigator is unable to complete the case within the specified time limit, he should be obliged to file a written request for an extension. This request should include his reasons for seeking the extra time and should be required to bear the counter signature of the complainant. If such written request is not forthcoming, the commission should be compelled to find probable cause in the case.

When a case is certified for public hearing, the hearing should be scheduled within ten days after appropriate notice is received by all parties. The hearing itself should commence within forty-five days after the initial receipt of notice of certification. Any request for an extension must bear the signature of the complainant indicating that he agrees to such a postponement.

In addition to the sanction of finding automatic probable cause, the agency should be encouraged to make use of Ch. 151 b, Section 8. This section provides for the exacting of criminal penalties against those who impede an investigation. For some unexplained reason, the present commission has discouraged the utilization of this section.

Within the agency, an accurate record should be maintained so that the present status of a case can be monitored at any time. A face sheet on the case folder and an up-to-date file should reflect where in the investigative process a case is.

The Committee wishes to emphasize that these time limits and other procedures will have little effect unless administrative and training changes are made concurrently. If these alterations are not effectuated, the time limits will always be broken and their purpose will not have been realized.

BRANCHES

The Committee recommends that there be an expansion in staff at the regional offices of MCAD. This expansion can be accomplished without hiring additional personnel through the reassigning of employees presently situated in the Boston office. Such reassignment will decrease the Boston emphasis of the agency, thus positively acting upon a circumstance which has proved most detrimental to the operation of the regional offices.

This relocation of personnel should be accompanied by the delegation of authority to the regional office staff. The authorization required from Boston to make a finding in a case or to bring a case before a sitting commissioner should be minimal. An important consideration is that the existence of power within the regional office will no doubt enhance that office's credibility with the community it serves.

The Committee recommends that MCAD explore the possibility of training members of community groups to take complaints in outlying areas. Such a program has been developed in Springfield and it appears to be successful. This procedure can be a great convenience to the complainant and a time-saver for commission employees.

LEGAL

The Committee recommends that the legal staff be paid from the state budget so as to provide them with a measure of job security. With all but the general counsel being paid through federal funds, it is disconcerting to the lawyers to know that the federal program under which they are employed might not be refunded at the end of any year. This is not a hollow fear because two federal programs that paid employees at the agency have been discontinued within the last year. These terminations have resulted in the loss of jobs.

Elsewhere in this report, it was recommended that senior field representatives replace attorneys as supervisors. If this recommendation is adopted and implemented, the Committee believes that an attorney's involvement in the investigative unit should be limited to providing legal consultation and to making himself acquainted with the facts of the case; so that, he will be prepared to assume an advocacy role once the investigation is completed and a finding is made. To insure that the unit is administratively sound, the supervising field representative must make all final decisions.

The Committee believes that the legal counsel within the agency should be confined to performing legal tasks. There are many legal problems such as the revision of commission guidelines which have gone unattended because the counsel's staff is bogged down fulfilling administrative responsibilities. Legal counsel doing non-legal work is a waste of resources. Moreover, it is difficult to recruit legal talent when prospective attorneys are made cognizant of the fact that they will be expected to do non-legal work.

The Committee recommends that the commission explore the possibility of creating a legal internship program in conjunction with local law schools. Such a program would ease the heavy burden on the present overworked legal staff while at the same time serving as a source for future recruitment.

COMPLAINANT-STAFF RELATIONS

The Committee urges that all MCAD employees that come in contact with complainants treat them in a straightforward manner. To do otherwise leads to disappointment and ultimately to distrust.

When a complainant files a grievance, the individual receiving the complaint should inform the complainant of the exact process by which a complaint is handled. A convenient way to accomplish this might be to have cards prepared which diagram all the steps that a case might go through. Once the complainant is made aware of the case processing procedure, he can better understand developments as they happen in his case.

Another practice that should be instituted at the time a complaint is filed is that of informing the complainant how long it may take to resolve his case. This can help eliminate the frustration felt on the part of the complainant when he expects quick results and they are not forthcoming.

As developments happen in a case, the person presently responsible for the complaint should inform the complainant of these developments. This reduces the need for an uninformed complainant to continually hound the agency in order to ferret out the status of his case.

PUBLIC RELATIONS

The Committee urges that the agency's public information officer increase his utilization of the media for the purpose of letting people know that MCAD exists. Such a program is important in the areas of the state lying outside greater Boston where many people are not aware that

the Commonwealth has an anti-discrimination agency. If more people are made aware of MCAD, the Committee believes that there will be an increase in the number of cases filed in the non-Boston offices.

A process should also be developed, whereby, potential respondents could be apprised of the discrimination laws that are on the statute books. Perhaps a folder could be prepared which would describe briefly each law and which could be mailed to all the employers within the state. This educational method would decrease the number of cases filed that are attributed to the ignorance of the respondent.

RELATIONS WITH OTHER AGENCIES

The Committee urges that MCAD establish closer ties with other state agencies for the purpose of effectuating anti-discriminatory programs such as the Altschuler Plan within these agencies. It would be much easier and palatable for all involved if programs could be developed on a voluntary and cooperative basis rather than through the coercive means of issuing an order. The compliance division whose personnel possess expertise in this area should be greater utilized in these endeavors.

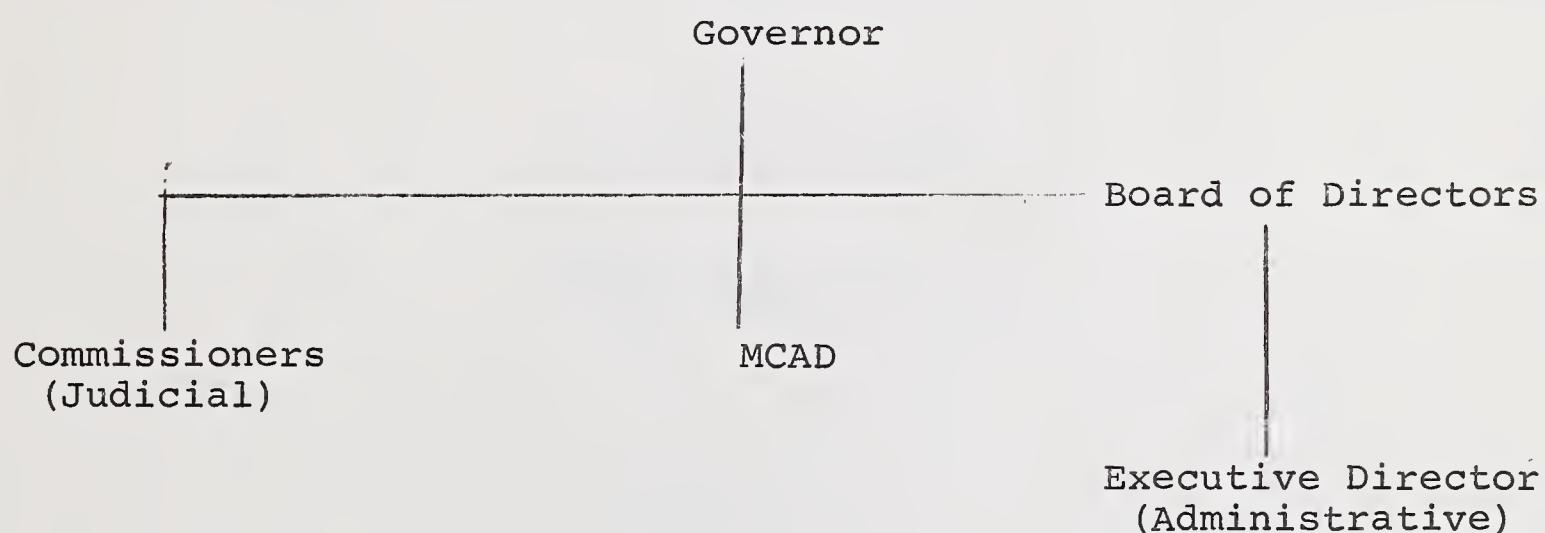
ADVOCACY

The Committee is in agreement that for the purpose of advocating the recommendations made in this report, its life should be extended for a limited time. Since many of these proposals will require legislative action, it will be necessary for an individual or group to undertake lobbying efforts on behalf of these suggestions in the Legislature. Therefore, since this Committee has attained a certain level of expertise in the workings of the commission and also best understands its recommendations, it is the belief of the Committee members that we are best qualified to perform this task.

APPENDIX

- I Charts
- II Public Hearings
- III Minutes
- IV Data
- V Training Committee
- VI Correspondence
- VII Job Descriptions
- VIII Field Operations
- IX Monthly Reports
- X Advisory Councils

ORGANIZATIONAL CHART



CASE PROCESSING WITH RECORD EXAMINER

